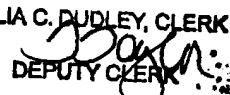


AUG 13 2010

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,

v.

FIDEL LUIS VIDAL,

Defendant.

)
)
) Case No. 5:08CR00037
) (Case No. 5:10CV80275)

) MEMORANDUM OPINION

)
) By: Glen E. Conrad
) Chief United States District Judge
)

The defendant, a federal inmate proceeding pro se, brings this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255, on the ground that his trial attorney failed to file a notice of appeal after being asked to do so. Trial counsel has filed an affidavit in support of this claim. Upon review of the record, the court concludes that the § 2255 motion must be granted.

Because counsel's admitted failure to file a notice of appeal after being asked to do so deprived the defendant of his Sixth Amendment right to counsel on appeal, the defendant is entitled to § 2255 relief, whether or not he has demonstrated any likelihood of success on appeal. United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993). The appropriate remedy in this situation is for the court to vacate the most recent judgment and to enter a new, identical judgment, from which the defendant can then appeal. Id. Opposing counsel has filed a response to the § 2255, indicating that the government has no objection to the entry of a new judgment identical to the most recent judgment. Accordingly, the court will grant the § 2255 motion and direct the clerk to prepare and enter a new judgment. An appropriate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the defendant at his current place of incarceration, to trial counsel, and to counsel of record for the government.

ENTER: This 12th day of August, 2010.



Chief United States District Judge